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In the Supreme Court of the United States

OCTOBER TERM 1968

No. ~~684~~ 14

MAE WHEELER, et al.,
Appellants,

vs.

JOHN MONTGOMERY, et al.,
Respondents.

On Appeal from the United States District Court
for the Northern District of California

Amicus Curiae Brief on Behalf of Appellants

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No. 634

MAE WHEELER, et al.,
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Amicus Curiae Brief on Behalf of Appellants

INTEREST OF AMICUS CURIAE, LEGAL AID SOCIETY OF ALAMEDA COUNTY

The Legal Aid Society of Alameda County is a non profit California corporation established in 1929 for the purpose of furnishing legal services to those residents of Alameda County who are unable to afford the services of private attorneys. Staff attorneys of the Society have training and experience in Welfare law. They are currently representing plaintiffs and respondents in *McCullough v. Terzian,*[1] a

1. The record on appeal in *McCullough v. Terzian,* consisting of a "Clerk's Transcript on Appeal", has been lodged with the Clerk of this court. References to "C.T." in this brief are references to said "Clerk's Transcript". Since this is an amicus curiae brief, the facts of the *McCullough* case are not before this Court, and it was thought unnecessary to file a formal record of the California State Court proceedings.

case now pending in the Court of Appeal of the State of California, First Appellate District, Division Three, 1 Civil No. 25830. At issue in that case is the validity with respect to California statutes and the California and United States Constitutions of the identical regulation passed on by the three judge court below and at issue herein, State Department of Social Welfare Public Social Service Manual 44-325.43 (hereinafter referred to as PSS 44-325.43).

McCullough is a class action in which plaintiffs and respondents represent all persons receiving public assistance under the categorical aid programs in the State of California. Defendants and appellants are HRAYR TERZIAN, Director of the Alameda County Welfare Department, and JOHN MONTGOMERY, Director of the Department of Social Welfare of the State of California. Respondent MONTGOMERY was a defendant in the three-judge court below and is a respondent in the instant appeal.

The trial court in *McCullough* rendered judgment in favor of plaintiffs, which judgment declared PSS 44-325.43 invalid "because and to the extent it does not provide a hearing with adequate procedural safeguards . . . prior to the withdrawal or termination of public assistance benefits under the [categorical aid] programs as required by State law and the United States and California Constitutions." (C.T. 103:29-104:6)* The judgment further ordered defendant MONTGOMERY to provide categorical aid benefits to which recipients are otherwise entitled "until a decision, if any, of ineligibility is rendered" pursuant to the State "fair hearing" or its equivalent.

Plaintiffs in *McCullough* have a direct interest in the outcome of this litigation. Their claim, (and the decision of the State Trial Court) is based in part on the contention

*See footnote 1, p. 1, supra.

that PSS 44-325.43 violates due process requirements of the Fourteenth Amendment of the United States Constitution, which is the very issue presented in the instant case. This Court's decision on the scope of Fourteenth Amendment due process will provide a minimum standard below which no state's law, whether decisional or statutory, may fall. Furthermore, amicus has carefully studied the California law as it bears on the sufficiency of the procedures at issue in the instant case, and has concluded that the State law, as well as federal, compels a reversal of the judgment of the District Court.

With the consent of both parties pursuant to Rule 42 of the Supreme Court Rules, Legal Aid Society of Alameda County respectfully submits its Amicus Curiae brief in support of appellants.

SUMMARY OF ARGUMENT

The District Court has upheld a regulation (PSS 44-325.43, reproduced in Appendix A) which prescribes the procedure followed in California before welfare benefits are withdrawn or withheld. The regulation applies only to recipients of the "categorical aids," Aid to Families with Dependent Children (AFDC), Aid to the Blind (AB), Aid to the Disabled (ATD), and Old Age Assistance (OAS).

The regulation requires notice to the recipient, in writing, immediately after a decison is made to withhold aid and in no case later than three days before aid is actually withheld. It further provides that the affected recipient will be given an opportunity within the three days to meet with a caseworker or other unspecified person to learn the nature and extent of the information upon which the withholding action is based, to provide an explanation, and to "discuss the matter informally for purposes of clarification and, where possible, resolution."

It does not provide adequate time to marshall or present contradicting evidence; it does not provide for the subpoena and cross-examination of witnesses; it does not provide for a review of the evidence by a clearly designated and impartial trier of fact; and it does not provide for a decision on the merits based solely on the record. In short it contains none of the procedural safeguards expressly included in the subsequent "fair hearing" (Calif. Welfare and Institutions Code §§ 10950-10965 hereafter, W & I Code) proceedings and generally contemplated by the requirement of a hearing.

It is uncontroverted that the constitutional adequacy of a "hearing" depends on the nature of the governmental function as well as the nature of the private interest involved. *Cafeteria and Restaurant Workers Union v. McElroy* (1961) 367 U.S. 886; *Sokol v. Public Utilities Commission* (1966) 65 C.2d 247, 418 P.2d 265.

The District Court opinion is based on the assumption that the obvious procedural inadequacies of the regulation (and the error and hardship which necessarily flow therefrom) are justified by the availability of a subsequent hearing at the state level after termination of benefits by the County (the fair hearing) and the competing public interest of time and expediency.

Amicus contends that notwithstanding the availability of a subsequent hearing due process requires an adequate hearing prior to the time official action takes effect. An adequate hearing is one that preserves all the elements of an adjudicatory proceeding unless there is a compelling public interest that requires the omission of one or more elements of such a hearing. Further, common sense dictates that where one element of judicial practice is omitted from administra-

tive adjudication, compensating safeguards are all the more necessary. The challenged regulation, however, far from compensating for procedural deficiencies, compounds them, by eliminating nearly all of them. It provides an informal proceeding appropriate for ordinary social worker-client relationships, but totally inappropriate when the client and the welfare department have become adversaries. Welfare aid is usually withheld or terminated because of changed circumstances about which there is no disagreement. Relevant here, however, are those cases in which the recipient denies an alleged change of circumstances. This is usually no mere misunderstanding that can be cleared up by informal conferences among people of good will with common interests. It is a dispute about facts, the resolution of which has the profoundest consequence for the recipient. The traditional procedures that have developed in our courts are still the best way, and the only constitutional way, to assure justice to all parties in adversary positions.

The following pages argue that the state has shown no such compelling public necessity as would justify the procedural inadequacies of the challenged regulation. In the *McCullough** case, in a motion before the California Court of Appeal, California's Attorney General has expressly stated that costs are not in issue. (See Appendix C.) Other public interests, such as administrative convenience, are hardly "compelling".

The argument continues to show that three days notice provided for by the challenged regulation is insufficient to permit a recipient to prepare his case; that without subpoena power, and without the right of confrontation and cross-

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*See footnote 1, p. 1, supra, and text thereto.

examination, a hearing is not an adjudicatory procedure, but only a tool of discovery; that without a record, the person who decides must decide on the basis of matters outside the record and may decide on a version of the evidence different from that which the recipient confronted; that the unnamed person in the welfare department who must decide is likely to be partial, not impartial; and that in permitting discontinuance of aid on the ground of "probable ineligibility" rather than "ineligibility" California authorizes a drastic result on vague and inadequate grounds.

Lastly, this brief argues that the California statute and case law may require even greater protection for the recipient than the United States Constitution, and, *a priori*, can require no less. The California Welfare and Institutions Code permits aid to be cancelled, suspended or revoked only "for cause" or "after investigation." Previous California interpretations of analogous language show that such language requires a hearing with *all* the usual procedural safeguards the word implies.

ARGUMENT

I. The Notice and Informal Conference Provided by the Challenged Regulation Prior to Termination of Benefits by a County Welfare Department Do Not Afford the Protections Required by Due Process.

The District Court held that the informal conference prescribed by PSS 44-325.43 is a constitutionally adequate "hearing" prior to termination of benefits, in the light of subsequent "fair hearing" requirements. This decision not only conflicts with the decision in *Kelly v. Wyman* (S.D. N.Y. 1968) 294 F. Supp. 893, probable jurisdiction noted, sub. nom *Goldberg v. Kelly*, 37 LW 3399, but with basic constitutional principles.

An erroneous decision to terminate aid to a welfare recipient is disastrous to the individuals affected. Under California Welfare and Institutions Code (hereinafter referred to as W. & I. Code) Sections 10950 et seq. the review of such a decision does not stay its effect, and the review takes two months or longer. Since most recipients are under an incapacity which prevents them from supporting themselves (e.g. blindness, old age, infancy or medical disability) they will not have minimum subsistence for this period. The existence of a hearing subsequent to termination, therefore, affects neither the importance of the prior decision nor its basic adjudicatory character.

As a general rule, due process requires that such a decision be made in accordance with "procedures which have traditionally been associated with the judicial process." *Hannah v. Larche* (1960) 363 U.S. 420, 442. These procedures have been held to include adequate notice, *Russell-Newman Manufacturing Co. v. N.L.R.B.* (1966) 370 F.2d 980; see, *Hornsby v. Allen* (1964) 326 F.2d 605, 608; the right to confrontation and cross-examination, *Greene v. McElroy* (1959) 360 U.S. 474; *Willner v. Committee on Character and Fitness* (1963) 373 U.S. 96; a decision based on evidence produced at a hearing, *Ohio Bell Telephone Co. v. P.U.C.* (1936) 301 U.S. 292; *English v. City of Long Beach* (1950) 35 C.2d 155, 217 P.2d 22; an impartial trier of fact, *Wasson v. Trowbridge* (1967) 382 F.2d 807; *In re Murchison* (1955) 349 U.S. 133; and a decision on the merits, *Endler v. Schutzbank* (1968) 68 C.2d 162, 436 P.2d 297.

Occasionally, where there is a compelling public interest involved, one or more of these elements may be constitutionally omitted. Absent considerations of compelling public necessity, however, due process requires the preservation of all the elements of an adjudicatory proceeding

necessary for the protection of the interests affected. *Cafeteria and Restaurant Workers v. McElroy* (1961) 367 U.S. 886; *Sokol v. Public Utilities Commission* (1966) 65 C.2d 247, 418 P.2d 265; *Dixon v. Alabama State Board of Education* (5 Cir. 1961) 294 F.2d 150. As is shown immediately below, there is no compelling public interest or other justification for the procedural inadequacies of the regulation. Thus, the hearing preceding the termination of aid to a welfare recipient must preserve all the traditional elements of the adjudicatory process. The regulation preserves none.

A. THERE IS NO COMPELLING PUBLIC NECESSITY OR OTHER JUSTIFICATION FOR THE PROCEDURAL INADEQUACIES OF THE REGULATION.

The District Court does not specify what public interest it relies on to justify the obvious procedural deficiencies in the regulation. Mere administrative inconvenience to the state or counties, certainly, cannot justify the sacrifice of safeguards required by due process. *Ohio Bell Telephone Company v. Public Utilities Com.* (1937) 301 U.S. 292, 304-305; *Endler v. Schutzbank* (1968) 68 C.2d 162, 180, 436 P.2d 297. Since adequate hearings are already provided after action is taken, it can hardly be claimed that the provision of such hearings prior to action would impair the ability of the state and county departments from carrying out the functions for which they are responsible.

Perhaps of ultimate concern to the State is the question of cost.[2] By providing for an *ex parte* determination of

2. In the case of *McCullough v. Terzian*, in the California Court of Appeal, the Attorney General of California filed a memorandum (Appendix C) opposing the introduction of additional evidence in that court, stating that "cost to the State has not been put in issue." The additional evidence offered was admittedly incomplete but tended to show that costs to the State resulting from the State-wide order of the trial court was not significant.

probable ineligibility without any provision for contesting that determination on its merits in a meaningful hearing prior to the withdrawal of benefits, the State Department of Social Welfare is obviously attempting to minimize the cost of paying welfare benefits to persons who may not in fact be eligible. In so doing they have apparently determined that it is more important to protect the public purse than it is to protect the public reputation for justice. While it is of course important to preserve public funds, constitutional rights cannot be sacrificed in the process. *Edwards v. California* (1941) 314 U.S. 160.

Furthermore, the costs thus saved will not be great. Under the judgment of the California Superior Court in *McCullough*,* for example, the continued payment of benefits pending an adequate hearing is available only to a person who controverts the allegations of ineligibility in a sworn statement and requests a "fair hearing". Payment of benefits to these persons pending an adequate hearing causes the State no financial injury at all if the recipient is found eligible, since binding federal regulations require payment of aid retroactively to the date of discontinuance. Federal Handbook of Public Assistance Administration (Federal Handbook), Sections 6200 (k), 6300 (g). Furthermore, aid payments pending hearing are explicity sanctioned under regulations enacted pursuant to the Federal Social Security Act. (Federal Handbook, Section 6500 (b)). Under these circumstances, amicus submits that the regulation fails to provide a hearing "at a meaningful time and in a meaningful manner" which due process requires. *Armstrong v. Manzo* (1965) 380 U.S. 545, 552.

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*See footnote 1, p. 1, supra, and text thereto.

B. A DECISION TO TERMINATE CATEGORICAL AID BENEFITS IS AN ADJUDICATORY ACT, REQUIRING, AS A MINIMUM, ADEQUATE NOTICE, OPPORTUNITY FOR CONFRONTATION AND CROSS-EXAMINATION, A DECISION BASED ON EVIDENCE PRODUCED AT A HEARING, AN IMPARTIAL TRIER OF FACT, AND A DECISION ON THE MERITS. THE CHALLENGED REGULATION PROVIDES NONE OF THESE.

A decision to withdraw benefits must be based on a determination that a recipient previously found eligible for such benefits is no longer eligible. In contested cases, such a determination requires the resolution of disputed factual issues and the application of detailed statutory and regulatory criteria and is therefore an adjudicatory act. See *Hornsby* v. *Allen* (5 Cir. 1964) 326 F.2d 605, 608. It therefore requires the elementary safeguards which the challenged regulation fails to provide. 326 F.2d at 608.

1. The regulation fails to provide adequate notice.

It is elementary that due process requires notice of charges sufficiently in advance of hearing to permit adequate preparation for a hearing. *Russell-Newman Manufacturing Company* v. *N.L.R.B.* (5 Cir. 1966) 370 F.2d 980; see *Hornsby* v. *Allen*, (5 Cir. 1964) 326 F.2d 605.

PSS 44-325.43 provides that a recipient shall be notified of a decision to withhold categorial aid benefits and the grounds therefor at least three days before aid is actually withheld. It further provides that the recipient shall be informed of the evidence on which such a decision is based at an informal conference which is the recipient's sole opportunity to contest the county's action before it takes effect.

The evidence presented to the recipient for the first time at the conference may be overwhelming in detail and may be in a form so general or unorganized that it would be difficult to refute under any conditions. To do so immediately after first notice is often impossible. Even if the county's evidence is made available to the recipient prior

to the conference, three days is manifestly too short a time to permit adequate preparation. In this briefest of periods, the recipient who receives notice of proposed termination must gather and present evidence to rebut a report which professional investigators had a month or longer to prepare.[3] He is called upon to secure legal counsel, discover and evaluate the factual and legal grounds for the proposed termination, contact the county department to schedule an informal conference, interview adverse and favorable witnesses and arrange for their presence at the conference (without the benefit of subpoenas), and secure relevant documentary evidence, such as medical reports or wage records (again without the benefit of subpoena power). If all this is not adequately accomplished in a period as short as three days, there will be no chance of disturbing the *ex parte* determination of ineligibility and benefits will be withheld. In these circumstances the right to counsel is illusory.

The regulation involved in *Kelly* v. *Wyman* (S.D.N.Y. 1968) 294 F. Supp. 893, probable jurisdiction noted, *sub nom Goldberg* v. *Kelly,* (1969) 37 LW 3399, required *seven* days written notice prior to the proposed effective date of the discontinuance. The District Court in that case deemed such notice mailed seven days before effective date adequate. This is one of the most important distinctions between the New York and California regulations.

While three days may provide notice of proposed action, it clearly does not provide an adequate opportunity to con-

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3. The record in *McCullough* (see footnote 1, supra, p. 1) shows that the investigation by the District attorney's office of Mary McCullough's eligibility lasted at least 36 days. On February 15, 1968, the man alleged to be living with Mrs. McCullough was interviewed, C.T. 73, and the supplement summarizing the statements of two witnesses is dated March 21, 1968. C.T. 75. This length of time is not exceptional.

test the validity of that action. The California regulation provides a tool of discovery rather than an adjudicatory proceeding.

2. The regulation provides no opportunity to test the credibility and probative value of evidence.

Even if the regulation permitted adequate time to prepare for the conference, it would be constitutionally inadequate because its failure to provide subpoena power or the power to administer oaths deprives both the county and the affected recipient of any opportunity to test the credibility and probative value of the evidence on which a decision to terminate benefits is based.

Complex factual determinations, such as whether a husband and wife are disassociated or have abandoned a child, whether a man has lived with a woman in a spouse-like relationship, or whether a person is physically or psychologically unemployable, are a necessary element in many decisions to withhold public assistance benefits. Where, as here, such fact findings serve as a predicate for governmental action which seriously injures an individual, confrontation and cross-examination are an indispensable element of a hearing. *Greene* v. *McElroy* (1959) 360 U.S. 474, 507; *Willner* v. *Committee on Character and Fitness* (1963) 373 U.S. 96. See, *Walker* v. *City of San Gabriel* (1942) 20 C.2d 879, 129 P.2d 349.

Under the regulation, however, a determination of ineligibility must be made on the basis of evidence which is primarily hearsay, circumstantial and untested opinion. "[N]ot only is the testimony of absent witnesses allowed to stand without the probing questions of the person under attack which often uncover inconsistencies, lapses of recollection, and bias, but in addition, even [county personnel] do not see the informants or know their identities, but

normally rely on an investigator's report of what the informant said without even examining the investigator personally." *Greene v. McElroy* (1959) 360 U.S. 474, 497-499 (footnotes omitted). Without the ability to require the attendance of witnesses and to take sworn testimony, a trier of fact has no rational or adequate method of weighing conflicting testimony and therefore cannot render a meaningful decision.

1. The regulation fails to require a decision based on evidence produced at a hearing.

A decisional process which permits a determination to be made on the basis of evidence heard *ex parte* is manifestly inadequate to protect the affected party against arbitrary action. *Ohio Bell Telephone Co.* v. *P.U.C.* (1937) 301 U.S. 292. "[T]he requirement of a hearing necessarily contemplates a decision in light of evidence there introduced." *English* v. *City of Long Beach* (1950) 35 C.2d 155, 159, 217 P.2d 22, 24.

The regulation provides an opportunity for the recipient "to learn the nature and extent of the information on which the withholding action is based" and "to provide an explanation or information." However, it does not provide the recipient with the right to present any such explanation or information to the person or persons responsible for rendering the ultimate decision, nor does it require that a record of the evidence be made and transmitted to the decision maker. Presumably the substance of the county's evidence and the recipient's "explanation or information" must be communicated to the person who decides. This material may be transmitted in such a manner as to destroy its worth altogether. Elements may be omitted, distorted or colored in the retelling. The version that ultimately reaches the trier of fact may be incomplete or in-

accurate, and may be quite different from the version that confronted the recipient at the informal conference.

Under these circumstances the opportunity offered by the regulation to "provide an explanation" offers no meaningful opportunity to present evidence and cannot be deemed to satisfy due process. See, *I.C.C. v. Louisville & N. R. Co.* (1912) 227 U.S. 88, 91; *Dixon v. Alabama State Board of Education* (5 Cir. 1961) 294 F.2d 150.

4. The regulation fails to provide an impartial trier of fact.

Even if a recipient were afforded adequate notice and the right of confrontation and cross-examination, the failure of PSS 44-325.43 to require a decision by a person having no prior direct involvement in the case renders it inadequate to provide the protection required by due process.

It is too clear to require argument or extended citations that a fair hearing presupposes an impartial trier of fact and that prior official involvement renders impartiality most difficult to maintain. *Wasson* v. *Trowbridge* (1967) 382 F.2d 807, 813. Under the regulation, an affected recipient is entitled only to a conference with his caseworker or other unspecified county personnel who not only may have been involved in prior aspects of his case, but who may have actually made the initial recommendation to withhold benefits. The court in *Kelly* v. *Wyman, supra,* 294 F. Supp. 893, 906 construed a regulation which provided:

> "Only the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension shall be designated to make such a review."

The court said that, if in practice the reviewing official were a case supervisor who had been consulted in advance for

approval of proposed terminations or who might even have initiated the recommendation to terminate, it would be a clear violation of the spirit of the New York regulation. 294 F. Supp. at 907. The California regulation does not even attempt to require the decision maker to be a superior of the one who made the initial decision. It leaves the position of the decision maker completely unspecified. In fact, in relatively small county welfare departments there may be only one superior in the department, so that he will undoubtedly be the one who made the preliminary decision. Thus, the California regulation cannot be construed so as to be constitutional, unlike the New York regulation.

To illustrate the application of the California regulation, in the case of Mrs. McCullough (one of the plaintiffs in the California State Court action*), after receiving the investigation reports of the Family Support Division of the District Attorney's office, the social worker for Mrs. McCullough, along with her supervisor, determined that her continued eligibility for welfare benefits was conditioned on her admission that she was and had been living with a man whose income would have to be considered in determining her grant. C.T. 51-52. The social worker then visited Mrs. McCullough, discussed the investigator's report with her, and advised her that if she admitted that the man in question was living with her, her grant would be adjusted in accordance with his income, but that if she denied it, aid would be discontinued. Mrs. McCullough denied the allegation and two days later she was notified that her case was being discontinued, "because of failure to provide essential information". C.T. 52. Although she had the right, before termination became effective, to again discuss

*See footnote 1, p. 1, supra, and text thereto.

the matter with her social worker, there was no right to independent review by any person not previously connected with the case. Instead of initiating an impartial review of the facts, her denial terminated her right to further benefits. The "hearing" provided by the regulation is no more than the opportunity to dissuade a person who has already decided (and who may have a vested interest in supporting that decision). Impartiality and fairness under these circumstances may not only be difficult, but impossible to maintain.

5. The regulation fails to require a decision on the merits.

Finally, and perhaps most significantly, the regulation does not require a decision on the merits but permits the county to withhold benefits upon the receipt of evidence "which is both substantial in nature and reliable in source . . . indicating . . . *probable ineligibility*", PSS 44-325.421 (Emphasis added; set forth in Appendix A.)

Not only is it incumbent upon the county to withdraw benefits upon a determination of probable ineligibility but it is required to do so *as soon as possible.* PSS 44-325.1 (Set forth in Appendix A). Under these circumstances a county may withhold benefits without regard to the contradictory evidence offered by a recipient, thereby leaving the ultimate decision on the merits to the subsequent hearing conducted by the State Department of Social Welfare.

The only place in our system of justice where such a proceeding is deemed permissible is in the area of law enforcement or where the public health or safety is endangered. *Sokol v. Public Utilities Commission* (1966) 65 C.2d 247, 418 P.2d 265; *North American Cold Storage Company v. City of Chicago* (1908) 211 U.S. 306. Even in those circumstances there are a variety of devices available to prevent

or mitigate the injury which may flow from the necessity of taking governmental action before there has been a full hearing on the merits, such as bail, release on own recognizance, preliminary hearings, etc. There are no devices for mitigating the damage herein or for staying the governmental action and there is no threat to the public safety involved.

In light of the vital interest of public assistance recipients in an adequate hearing prior to withdrawal of benefits and of the absence of any significant interest of the County or State to the contrary, amicus submits that the termination procedures of PSS 44-325.43 are "inconsistent with rational justice, and [come] under the Constitution's condemnation of all arbitrary exercise of power." *I.C.C. v. Louisville & N. R. Co.* (1912) 227 U.S. 88, 91.

C. THE AVAILABILITY OF A SUBSEQUENT HEARING DOES NOT JUSTIFY THE ELIMINATION OF AN ADEQUATE PRIOR HEARING.

The District Court opinion implies that the procedural safeguards obviously omitted from the regulation are not constitutionally required prior to the termination of benefits because a fair hearing is available afterwards. The law is clearly to the contrary. Absent come compelling public interest, due process requires procedural safeguards adequate to protect the interest affected *prior* to action.

This Court most recently reaffirmed this proposition in *Sniadach v. Family Finance Corp.* (1969) ..... U.S. ....., 37 LW 4520.

Two California cases are likewise instructive on the necessity of a hearing prior to the time action takes effect, despite subsequent procedures. *Mendoza v. Small Claims Court* (1958) 49 C.2d 668, 321 P.2d 9; *Sokol v. Public Utilities Commission* (1966) 65 C.2d 247, 418 P.2d 265.

At issue in *Mendoza* was whether a month-to-month tenant could be deprived of possession pursuant to a small claims court judgment where there had been no right to counsel. The California Supreme Court unanimously held that he could not; and that therefore a statute vesting jurisdiction of unlawful detainer actions in small claims courts violated due process because it contained no provision for an automatic stay on appeal and the tenant could be dispossessed before the appeal was determined. The small claims hearing, which is an informal trial before a judge on adequate notice, California Code Civ. Proc., Sec. 117 et seq., was deemed inadequate to permit dispossession of the tenant despite the appeal right to a subsequent trial *de novo* with counsel.

In *Sokol* the interest of a telephone subscriber in avoiding a temporary interruption of service was at stake. The opinion held unconstitutional a regulation which permitted disconnection of telephone service on the basis of a police allegation that it was being used illegally and which provided a hearing only after service was terminated. The court stated that at a minimum, due process requires that an *ex parte* determination of probable cause be made by an impartial tribunal prior to disconnection, and that the subsequent hearing be promptly provided. 65 C.2d 247, 250, 418 P.2d 265, 271.

In the instant case, there can be no impairment of a vital government function, such as law enforcement, which was involved in *Sokol*. On the other hand, the interest of a categorical aid recipient in continued receipt of aid pending an adequate hearing is far greater than the interest in continuous telephone service and is at least as great as the interest of the tenant in possession. The inability of the wrongfully terminated categorical aid recipient to pay his

rent subjects him to an unlawful detainer suit to which he will have no defense, and to subsequent eviction. Calif. Code Civ. Proc., Sec. 1159 et seq. His inability to pay utility bills will result in disconnection of telephone, gas and electricity. Yet PSS 44-325.43 contains no provision under any circumstances for a stay of decision pending an adequate hearing, such as the California Legislature added to the statute after *Mendoza* to render it constitutional. Calif. Code Civ. Proc., Sec. 117 j (Calif. Stats. 1959, ch. 1982, p. 4588) Therefore, even when a recipient appeals in good faith, as evidenced by the filing of the sworn statement required by the judgment in *McCullough*,* the regulation permits termination of his aid after a so-called "hearing" which provides far less protection than a small claims trial before a judge, at issue in *Mendoza*, and which does not even afford the most elementary safeguard of an impartial tribunal which was required to protect a far less vital interest in *Sokol*.

So far as amicus can determine, no administrative agency has ever been permitted to terminate an interest comparable to that involved here under procedures so utterly lacking in elementary safeguards.† Even if there are considerations which permit the relaxation of one or more of the elements discussed above, (pp. 10-17), no case has been discovered which approves proceedings lacking all of these basic safeguards.

"For the guidance of the parties", the court in *Dixon v. Alabama State Board of Education* (5 Cir. 1961) 294 F.2d 150, 158, cert. den. 368 U.S. 930, set forth its views "on the

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*See footnote 1, p. 1, supra, and text thereto.

†Appendix B describes the rules of procedure governing proceedings which are used by a representative group of administrative agencies in acting to revoke or suspend a license or privilege granted to an individual.

nature of the notice and hearing required by due process *prior to expulsion from a state college or university.*" (Emphasis added). The views expressed were dictum and were expressly limited to the facts of the particular case. They are instructive however. The court specifically rejected the idea that "an informal interview with an administrative authority" was a sufficient hearing prior to expulsion. While it did not require a full trial-type hearing including the right to cross-examine witnesses, this was because "[s]uch a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out." 294 F.2d at 159.

It hardly needs to be stated that categorical aid recipients are not subject to the same disciplinary requirements as college students, (see *Parrish v. Civil Service Commission* (1966) 66 C.2d 260, 425 P.2d 223) and that an adequate hearing provided before termination of benefits will entail no disruption of the Welfare Department's functions. The receipt of categorical aid benefits pending a hearing cannot be dismissed as a lesser interest than attendance at a tax supported college.

On the other hand, considered essential by the *Dixon* court were: notice containing a statement of the specific charges and grounds, a report to the student including the names of all witnesses and the facts to which they testify, an opportunity to hear both sides in considerable detail including an opportunity to present a defense with oral testimony and written affidavits, and a report on the findings of the hearing. In short, the court suggests that the rudiments of an adversary system should be preserved as much as possible without encroaching upon the legitimate interest of the governmental agency involved.

It simply makes sense that where one element of judicial practice has been omitted from administrative adjudications, the provision of compensating safeguards is all the more necessary. *I.C.C. v. Louisville & N. R. Co.* (1912) 227 U.S. 88, 93; *Shively v. Stewart* (1966) 65 C.2d 475, 480, 421 P.2d 65.

It is sometimes suggested that welfare recipients are not entitled to the same due process as other more fortunate citizens because there is no constitutional right to receive such assistance.

Whether or not there exists a vested right to public assistance benefits, the requirements of procedural due process must be met before such benefits may be withdrawn. Courts have explicitly rejected the view that adequate procedural safeguards are required only when vested or constitutional rights are at stake and have required hearings to protect the interest of a student in remaining in a tax-supported university, *Dixon v. Alabama State Board of Education* (5 Cir. 1961) 294 F.2d 150, 156; *Goldberg v. Regents of the University of California* (1967) 248 C.A.2d 867, 57 Cal. Rptr. 463; the interest of an applicant for or holder of a business license; *Hornsby v. Allen* (5 Cir. 1964) 326 P.2d 605, 609; *Fascination Inc. v. Hoover* (1952) 39 C.2d 260, 269, 246 P.2d 656, 661; one's interest in employment, *Slochower v. Board of Education* (1956) 350 U.S. 551; *Greene v. McElroy* (1959) 360 U.S. 474; and one's interest in doing business with a government agency *Gonzalez v. Freeman* (D.C. Cir. 1964) 334 F.2d 570, 574. As the court stated in *Cafeteria and Restaurant Workers v. McElroy* (1961) 367 U.S. 886, 894, "One may not have a constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process of law."

Under California law, categorical aid benefits must be administered promptly and humanely. W & I Code Sec. 10000. Due process requires no more. Although the fair hearing provided by the state to review county action may satisfy the requirement of statewide supervision, W & I Code Sec. 10600, it comes too late to satisfy the requirement of due process. The state is fully able to provide protection more meaningful than that provided under present practice. It can either require an adequate hearing on the county level or provide for a stay of the county's decision pending the state "fair hearing." It does neither, but instead permits benefits to be withdrawn after nothing more than a summary *ex parte* determination and an illusory opportunity to dissuade afterwards. It seeks to minimize costs rather than injustice. By so doing it can only further the alienation of society's most disadvantaged persons from their Government and the alienation of their Government from its founding principles. As stated by Jackson, J.:

> "Let it not be overlooked that due process of law is not for the sole benefit of an accused. It is the best insurance for the Government itself against those blunders which leave lasting stains on a system of Justice but which are bound to occur on ex parte consideration." Dissenting opinion, *Shaughnessy v. United States* (1953) 345 U.S. 206, 224-225.

II. The Notice and Informal Conference Provided by the Challenged Regulation Prior to Termination of Categorical Aid Benefits by a County Welfare Department Do Not Afford the Protection Required by the California Legislature.

California conceded in *McCullough** that the requirement of the W & I Code that benefits under the categorical aid

*See footnote 1, p. 1, supra, and text thereto.

program may be withdrawn "for cause"† carries with it the right to a hearing prior to actual withdrawal. (Appellant's Opening Brief, page 16) *Ratliff v. Lampton* (1948) 32 C.2d 226, 195 P.2d 792.

In *Ratliff*, the California Supreme Court held that a statute authorizing the Department of Motor Vehicles to revoke a driver's license for good cause carried with it the right to a hearing before the Department *prior* to revocation despite provision in the statute for a subsequent hearing before the Director of the Department. The decision rests on the rule, established in a series of prior cases, that where an agency is required by statute to act for cause, an affected party must be afforded a hearing prior to action unless there is a clear showing of a contrary legislative intent. *Carroll v. California Horse Racing Board* (1940) 16 C.2d 164, 105 P.2d 110 (suspension of horse trainer's license); *La Prade v. Department of Water and Power* (1945) 27 C.2d 47, 162 P.2d 13 (civil service discharge); *Covert v. State Board of Equalization* (1946) 29 C.2d 125, 173 P.2d 545 (liquor license revocation). The court in *Ratliff* stated:

> "The fact that the Vehicle Code provided for an administrative review subsequent to revocation does not alter this rule. We should not imply legislative intent to deprive a person of his license without a prior opportunity to be heard unless compelled to do so by the plain language of the statute, regardless of whether

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†The county must have cause to cancel, suspend or revoke aid in the Aid to Families with Dependent Children, Old Age Security, and Aid to Blind programs. W & I Code Sec. 11458, 12200, and 12700 respectively. The provision of W. & I. Code Sec. 13750 permitting the county to cancel, suspend or revoke Aid to Disabled Benefits "after investigation" imposes the same hearing requirement as the "for cause" provisions of the other sections. See *Steen v. Board of Civil Service Commissioners* (1945) 26 C.2d 716, 160 P.2d 816, "The words 'hearing' and 'investigation' may mean the same thing." *Ratliff v. Lampton* (1948) 32 C.2d 226, 231, 195 P.2d 792, 795.

there is a right to administrative review after the revocation." 32 C.2d at 230, 195 P.2d at 795.

An identical statutory scheme manifests the Legislature's intent to require a hearing prior to action in the instant case. The county is required to act for cause or after investigation in terminating aid, and a hearing subsequent to action is provided before the Director of the State Department of Social Welfare. W. & I. Code Sec. 10950 et seq.

The District Court held that PSS 44-325.43 meets the requirement of a hearing prior to the withdrawal of benefits. The regulation provides that an initial decision to withhold or terminate benefits is made by administrative personnel in the County Department on the basis of evidence which is presented and reviewed *ex parte* and which may be totally hearsay, circumstantial or untested opinion. It permits the county to give the affected recipient as little as three days' notice of the decision to withdraw benefits and requires that the caseworker, an eligibility worker or other unspecified person in the county department be available for an informal conference with the recipient. At the conference, the recipient is confronted for the first time with the evidence on which the withholding action is based and may provide any explanation or information he may wish in support of his eligibility. The decision to withhold benefits takes effect automatically unless as a result of the informal conference or on some other ground, the county department reverses itself. It is clear from *Ratliff* and the cases on which it relies that the statutory requirement that welfare benefits be terminated for cause carries with it the right to a procedurally adequate hearing prior to withdrawal of benefits regardless of the existence of subsequent review.

Steen v. Board of Civil Service Commissioners, (1945) 26 C.2d 716, 160 P.2d 816, and the other cases relied on in *Ratliff,* established beyond doubt that when an agency may act for cause only, it must provide a hearing subject to the procedural and evidentiary rules normally associated with the term and not left to the unfettered discretion of the agency.

In *Steen,* the court specifically disapproved a statement in a prior case that the conduct of a hearing and the class of evidence to be heard were matters of administrative discretion and that nothing more was required than that the affected party "be permitted to produce his evidence". The court stated that this was too permissive and that "a hearing is required with all that the term implies", where a board is required to "investigate" a civil service discharge. 26 S.2d at 725, 160 P.2d at 821.

As to the evidence required to support an administrative determination of cause, three of the cases principally relied on in *Ratliff* cite the rule established in *Walker v. City of San Gabriel* (1942) 20 C.2d 879, 129 P.2d 349, that hearsay alone cannot support an administrative decision. *Steen v. Board of Civil Service Commissioners* (1945) 26 C.2d 716, 727; 160 P.2d 816, 822; *La Prade v. Department of Water and Power* (1945) 27 C.2d 47, 51; 162 P.2d 13, 15; *Covert v. State Board of Equalization* (1946) 29 C.2d 125, 173 P.2d 545. The court in *Steen* ruled that the petitioner was denied a hearing where the only evidence introduced in support of the administrative decision was an unsworn and unverified investigation report. 26 C.2d at 727, 160 P.2d at 822.

In *La Prade, supra,* the court stated that even if an investigation report is competent evidence, no hearing is had unless the report "is introduced into evidence and the accused is given an opportunity to cross-examine the maker thereof and refute it." 27 C.2d at 52, 162 P.2d at 16.

Although the court in *Ratliff, supra,* indicated that the hearing prior to action might be less formal than the subsequent hearing, it did not sanction a conference subject to no procedural or decisional rules whatever. Procedures virtually identical to those provided by PSS 44-325.43 were, as a practical matter, undoubtedly available in *Ratliff* also, since the statute required ten days notice prior to the revocation of a license. During this period, administrative officials were presumably available and willing to inform the licensee of the basis of their proposed action and to listen to any explanation or information he wished to provide. Yet it was not even contended that the opportunity for informal review afforded by the ten-day notice period constituted the hearing required by statute.

The use of an informal conference to meet a statutory requirement that administrative action be "for cause only" was specifically rejected in *Keenan v. S.F. Unified School District* (1950) 34 C.2d 708, 214 P.2d 382. The court stated that "informal interviews with administrative officers . . . did not constitute a hearing contemplated by the statute." 34 C.2d at 715, 214 P.2d at 386.

PSS 44-325.43 provides no more than the informal interview with administrative personnel which was specifically found not to be a hearing in *Keenan* and which was presumably available with an even greater notice period in *Ratliff*. It permits a decision of ineligibility to be rendered solely on the basis of an investigator's hearsay report, which California courts have consistently held to be a denial of a hearing. *Walker v. City of San Gabriel* (1942) 20 C.2d 879, 129 P.2d 349; *Steen v. Board of Civil Service Commissioners* (1945) 26 C.2d 716, 160 P.2d 816; *La Prade v. Department of Water and Power* (1945) 27 C.2d 47, 162 P.2d 13. In failing to specify the nature of the conference, the regulation vests in the county the same unlimited dis-

cretion which *Steen* specifically disapproved. Far from meeting the requirements of a hearing under California law, the regulation exhibits the same defects which have rendered other procedures inadequate to meet statutory requirements identical to those presented here.

Further indicative of the legislative intent to require greater safeguards than the regulation provides prior to termination is the length of time permitted by statute for the rendition of the state "fair hearing decision". Although newly adopted regulations of the State Department of Social Welfare require such a decision within sixty days after the hearing, (Operations Manual, 22-043 through 22-065, (see also, Federal Handbook § 6200(j)), the Legislature has explicitly permitted 180 days to elapse before such a decision is rendered. W.&I. Code Sec. 10950 et seq. The length of this statutory time limit provides a clear indication that in requiring cause for the withdrawal of benefits, the Legislature must have intended to provide a hearing fully adequate to protect the aid recipient during the six months permitted for subsequent review.

The hearing required by statute may afford greater safeguards than due process requires. In *Ratliff v. Lampton*, (1948) 32 C.2d 226, 232, 195 P.2d 792, 796, the court specifically stated that while the summary revocation of a driver's license might be constitutionally permissible, this "cannot be used to imply a legislative intent to deny [the right to a hearing] before the revocation." Later the Constitution was held *not* to require a hearing, *Escobedo v. State of California* (1950) 35 C.2d 870, 222 P.2d 1, leaving *Ratliff* to stand for the proposition that "for cause" in a statute means more than "due process" in the U.S. Constitution.

CONCLUSION

For the foregoing reasons this Court should reverse the judgment of dismissal rendered by the District Court as to the class. It should make clear that informal proceedings have a place in the system, but that such procedures do not due process when a proceeding has become adversary in nature. It should make clear that aid to welfare recipients may not be terminated or withheld without an adequate hearing, and that such a hearing must include all the safeguards that are customarily available in adjudicatory proceedings, including adequate notice, right to counsel, confrontation and cross examination, a record of the evidence, a decision based on the evidence by an impartial person and a decision on the merits.

Dated,
Oakland, California, June 20, 1969

Respectfully submitted,

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(Appendices follow)

Appendix A

44-325 CHANGES IN AMOUNT OF PAYMENT 44-325

.1 *When Change is Effective*

Whenever any change in the circumstances requires a change in grant, or a discontinuance of aid the appropriate change or discontinuance is to be made effective as soon as possible. (See Sections 44-333.12, Adjustment Period, and 44-331.1, Adjustment of Underpayment by Authorization of Retroactive Aid.)

.11 If the change in the aid payment (as determined in accord with PSS Section 44-315.5), amounts to less than $2 per month, such change is not to be made.

.12 *Decrease:* Where the required change is a *decrease* of $2 or less, it shall be effective not later than the second month following that in which the changed circumstances were reported, and no adjustment is to be made for overpayment of $2 or less in the month of reporting or in the following month.

.13 *Increase:* When the change in circumstances will continue for only one or two months, and the amount of the *increase* would be $2 or less, no change is made in the continuing authorization.

.2 *Change in Income or Need*

.21 *Change and Amount Known in Advance*

If a change in income or need, including the amount, is known in advance, any necessary change in the amount of payment is made effective with the month in which the changed circumstances will occur.

AFDC .22 *Change Known in Advance But Amount Not Known*

.221 *Concurrent Payment and Budget Periods*

When it is known that income will start in the next month but the exact amount is not known, or when income is variable in amount, an estimate of the expected income shall be made, on the basis of available information, for the purpose of determining the next current month aid payment. If the estimate indicates ineligibility for any grant, aid may be withheld pending verification of actual income (see Section .421 below). If the estimated income proves to be incorrect when actual income is reported, corrective action is taken to adjust the payment within the limitations of PSS Sections 44-331 and 44-335.

.222 *Budget Planning Period with Subsequent Payment Period*

Actual income received in the Planning Period is reported and reflected in the subsequent payment.

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AFDC .3 *Discontinuance*

If a recipient's circumstances change to the extent that he no longer meets the eligibility requirements, aid shall be discontinued effective the last day of the month for which the last payment was made. (See PSS Section 44-315 re appropriate action when the recipient is no longer eligible to a cash grant but remains eligible to medical assistance as a medically needy person.)

.4 *Withheld Payment*

.41 Withheld Payment—Defined

A withheld payment is one which is held beyond the usual delivery date while information concerning

needs, income or basic eligibility is investigated, subject to Section 44-325.43.

.42 Limitations on and Requirements for Withholding of Aid Payment

Subject to the following limitations, aid payments shall be withheld when further investigation is necessary to determine continuing eligibility.

.421 Recipients should have the assurance of regular and continued aid payment without interruption or delay. Accordingly, an aid payment may be withheld beyond the usual delivery date only when evidence which is both substantial in nature and reliable in source is received by the county, indicating:

a. Probable ineligibility of the recipient, or
b. A probable overpayment has occurred or is occurring which can be adjusted only if aid payment is withheld.

.422 Aid payment shall not be withheld pending ascertainment of increases in federal benefits such as social security or increases in benefits payable by a public agency. (W&IC Section 11014.)

.423 Aid payment shall not be withheld because of actual or probable changes in need or income when it appears that any resulting overpayment can be adjusted in the grant(s) for a subsequent month or months. (See PSS Section 44-335.) (If a recipient will be disadvantaged by delaying the adjustment another month, the county should discuss with the recipient the desirability of an immediate cur-

rent cash adjustment for the overpayment in lieu of the delayed grant adjustment.)

.424 An initial payment shall not be withheld beyond the month for which it was authorized.

AFDC

.425 The first installment of a month's *AFDC* aid payment may be withheld if the county's evaluation of circumstances indicates probable ineligibility. If the question cannot be resolved by the end of the first semi-monthly period following that in which it arose, the second payment is always withheld.

Unless the first installment of a month's aid payment has been withheld, the second installment is never withheld except when:

a. *Probable or actual ineligibility for the first installment was discovered too late to hold that payment, or*

b. *Probable overpayment is occurring which can be adjusted only if the second installment is withheld or if the recipient would be seriously disadvantaged by the delayed adjustment.*

For counties on the Subsequent Payment Plan the second installment is never withheld because of changes occurring within the current payment period.

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AFDC

.43 *Notification to Recipient When Aid Payment is Withheld*

The recipient, the parent or other person responsible for the child in *AFDC*, shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual deliv-

ery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:

.431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to re-establish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given time period which shall not exceed three

(3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:

(a) To learn the nature and extent of the information on which the withholding action is based;

(b) To provide any explanation or information, including, but not limited to that described in the notification pursuant to Section .431 above;

(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution.

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AFDC

.44 *Investigation and Time Limitations*

.441 Evidence raising doubt concerning eligibility or the correctness of grant is to be evaluated, and any needed investigation initiated and completed promptly, regardless of whether there is basis for withholding an aid payment. Such investigation must be completed and appropriate action with respect to the grant taken, within not more than 30 calendar days after the date on which the information which raised doubt concerning eligibility or the grant was received by the county. (See Section 40-155.2 regarding Methods of Investigation.)

.442 Aid payment for a second month may be withheld when the investigation is completed and the facts regarding continuing eligibility or

correctness of grant are established too late in the 30-day period:

a. To permit any necessary discontinuance of aid prior to the second month unless the aid payment is withheld, or

b. To permit necessary adjustment in the aid payment where eligibility continues but to a lesser amount, and delay in the adjustment for another month would result in overpayment which could not be adjusted.

When aid is withheld for a second month the withheld warrants shall be reissued in the correct amount and delivered to the recipient within a maximum of ten calendar days following the normal due date for the second withheld warrant, or delivered to the recipient and a current cash adjustment obtained from him. (See Section 44-333.12.)

.45 *Action on Withheld Aid Payment Following Investigation*

.451 Investigation Establishes Recipient Eligible to Receive Aid and That Withheld Payment Was in Correct Amount.

The withheld payment shall be delivered immediately and aid payment continued. (If the recipient was eligible on the first day of the month aid shall be paid for the entire month.)

.452 Investigation Establishes Eligibility but That Aid should Be Paid in An Amount Less Than the Withheld Payment.

The withheld payment shall be delivered, provided any resulting overpayment can be adjusted within the adjustment period. In such case at the time the withheld warrant is delivered, the recipient shall be informed regarding the future grant adjustment(s) which must be made. If the resulting overpayment cannot be adjusted in the adjustment period, the withheld payment shall be canceled and reissued and any indicated change made in the continuing grant.

.453 Investigation Establishes Recipient Was Ineligible to Withheld Payment but Continues Eligible to Aid.

The withheld payment is canceled and such cancellation is not considered an interruption in the authorization for payment.

AB
ATD
OAS
AFDC

.454 Investigation Establishes Ineligibility to Withheld Payment and to Continuing Aid.

a. Aid was withheld because of probable ineligibility.

Both the cash grant payment and certification for medical assistance are discontinued retroactively effective the last day of the last month for which a cash grant payment was made. The withheld cash grant payment is canceled.

b. Aid was withheld solely for the purpose of determining the amount of aid to which the recipient was eligible but he subsequently was found to be ineligible.

There are two discontinuance dates both which must be entered on the document discontinuing aid.

The cash grant payment is discontinued retroactively effective the last day of the last month for which a cash grant payment was made and the withheld payment is canceled.

Medical assistance is discontinued effective the last day of the last month for which aid was withheld. (This later discontinuance date is necessary because such recipient continued to be certified for medical assistance as a public assistance recipient during the period aid was withheld.)

.455 Investigation Not Completed at End of 30 Days.

a. Preponderance of Evidence Indicates Recipient Is Ineligible.

Aid is discontinued in the manner specified in Section .454 above.

b. Basic Eligibility Not in Question but There is Still an Unresolved Question Regarding the Amount of Aid to Which Recipient is Eligible.

The withheld warrant and, if indicated, the continuing grant are adjusted on the basis of the best available information and the payments issued to the recipient, the investigation continues and when completed appropriate adjustment is made.

Appendix B

A COMPARISON OF CERTAIN PROCEDURES OF SELECTED ADMINISTRATIVE AGENCIES

This appendix describes the Rules of Procedure governing proceedings which are used by a representative group of administrative agencies in acting to revoke or suspend a license or privilege granted to an individual. The appendix does not purport to set out all the procedural rules of all federal and state agencies. Rather it seeks to demonstrate that many decision-making administrative bodies generally have more procedural safeguards integrated into their hearings on the revocation of privileges than those which are provided by the California State Department of Social Welfare in hearings on the termination of welfare benefits.

The agencies referred to and the functions they perform, subject to the procedures outlined, and the abbreviations used hereinafter are the following:

Welfare:

The County Welfare Department under the regulations of the California State Department of Social Welfare, Public Social Services Manual, Section 44-325.43, when terminating welfare assistance.

Cal. A.P.A.:

The more than 44 agencies subject to the California Administrative Procedure Act (Govt. Code Sections 11500 et seq.) when exercising the power to revoke licenses or terminate privileges.

Cal. Civil Service:

The California State Personnel Board when dismissing a civil service employee for cause. (Govt. Code Sections 19570 and 19500.)

School Boards:

Governing Boards of the school districts in California when dismissing permanent teachers. (Ed. Code Section 13404.) (When temporary teachers are dismissed for cause and request a hearing, the California Administrative Procedures Act (Govt. Code Sections 11500 et seq.) applies.)

D.M.V.:

California Department of Motor Vehicles, when suspending or revoking the privilege of any person to operate a motor vehicle. (Vehicle Code Section 13800.)

U.S.A.P.A.:

Agencies subject to the Federal Administrative Procedure Act, 5 U.S.C. Section 551; i.e., all agency action of the Atomic Energy Commission (42 U.S.C. Section 2231); procedure of the Detention Review Board (50 U.S.C. Section 818); rules governing employment in executive, administrative, professional or outside salesman capacities under the Fair Labor Standards Act (29 U.S.C. Section 213[a]); administrative proceedings conducted under the Farm Labor Contractor Registration Act; hearings under the Federal Communications Act (47 U.S.C. Section 409); agency action taken under the Helium Act (50 U.S.C. Section 167[h]); rules and orders of federal departments and agencies issued to prohibit exclusion of persons from participation in federally assisted programs because of race, color or national origin (42 U.S.C. Section 2000[d-2]); revocation of seaman's documents by the Secretary of Transportation (46 U.S.C. Section 239); conduct of proceedings by the Subversive Activities Control Board (50 U.S.C. Section 795); proceedings under the Uniform Time Act of 1966 (15 U.S.C. Section 266); Walsh-Healy Act (41 U.S.C. Section 43(a).

C.A.B.:

Civil Aeronautics Board (Federal Aviation Administrator) when suspending or revoking any navigation certificate. (49 U.S.C. Section 1429.)

Defense Security:

U.S. Department of Defense, Industrial Personnel Security Clearance Program, when revoking the security clearance of a person employed in private industry. (32 C.F.R. Sections 155.7-155.9 (1968))

Immigration:

United States Immigration Authority when determining whether an alien should be deported. (8 U.S.C. Section 1252 (1964).)

1. HOW MUCH MINIMUM NOTICE OF THE ACTION IS THE INDIVIDUAL AGAINST WHOM SUCH ACTION IS TO BE TAKEN ENTITLED TO?

Agency	Answer	Citation
Welfare:	3 days	
Cal. A.P.A.:	25 days	Gov. Code 11505(b) and 11509
Cal. Civil Service:	15 days after action effective	See Gov. Code 19574
School Boards:	30 days plus	Ed. C. 13404 and 13412
D.M.V.:	20 days; except where physical & mental health of the licensee requires immediate action.	Veh. C. 14107, 14100 and 13953.
U.S. A.P.A.:	Timely notice	80 Stat. 384 (1966); 5 U.S.C. 554(b) (Supp. II, 1967).
C.A.B.:	15 days plus adequate notice	72 Stat. 779 (1958); 49 U.S.C. 1429 (1964); 14 C.F.R. Sec. 13.55 (1968); 14 C.F.R. Sec. 13.19(c)(4)(1968).
Defense Security:	20 days plus reasonable time to prepare	32 C.F.R. 155.7(a)(7) 32 C.F.R. 155.7(a)(8)
Immigration:	Reasonable under all the circumstances	66 Stat. 209 (1952); 8 U.S.C. 1252(b)(1) (1964)

2. IS THE INDIVIDUAL AGAINST WHOM ACTION IS BEING TAKEN ENTITLED TO BE REPRESENTED BY COUNSEL AT THE HEARING?

Agency	Answer	Citation
Welfare:	Not specified; presumably yes	
Cal. A.P.A.:	Yes	Gov. C. 11509
Cal. Civil Service:	Yes	See Gov. C. 19574.1
School Boards:	Yes	Ed. C. 13425
D.M.V.:	Yes	Veh. C. 14112
U.S. A.P.A.:	Yes	80 Stat. 385 (1966); 5 U.S.C. 555(b) (Supp. II, 1967).
C.A.B.:	Yes	14 C.F.R. 13.33 (1968).
Defense Security:	Yes	32 C.F.R. 155.7(a)(8) (1968).
Immigration:	Yes	66 Stat. 209 (1952); 8 U.S.C. 1252(b)(2) (1964).

3. IS THE INDIVIDUAL AGAINST WHOM ACTION IS BEING TAKEN ENTITLED TO HAVE WITNESSES SUBPOENAED TO TESTIFY IN HIS BEHALF?

Agency	Answer	Citation
Welfare:	No	
Cal. A.P.A.:	Yes	Gov. C. 11510(a)
Cal. Civil Service:	Yes	Gov. C. 19581
School Boards:	Yes	Ed. C. 13417, 13425
D.M.V.:	Yes	Veh. C. 14112
U.S. A.P.A.:	Yes	80 Stat. 385 (1966); 5 U.S.C. 555(d)(Supp. II, 1967).
C.A.B.:	Yes	14 C.F.R. 13.57 (1968).
Defense Security:	Yes	32 C.F.R. 155.7(b)(3) (1968).
Immigration:	Yes	66 Stat. 198 (1952); 8 U.S.C. 1225(a)(1964).

4. IS THE INDIVIDUAL AGAINST WHOM ACTION IS BEING TAKEN ENTITLED TO CROSS-EXAMINE WITNESSES TESTIFYING AGAINST HIM?

Agency	Answer	Citation
Welfare:	No	
Cal. A.P.A.:	Yes	Gov. C. 11513(b).
Cal. Civil Service:	Yes	Gov. C. 19580.
School Boards:	Yes	Ed. C. 13417, 13425.
D.M.V.:	Yes	Veh. C. 14112.
U.S. A.P.A.:	Yes	80 Stat. 386 (1966); 5 U.S.C. 556(d) (Supp. II, 1967).
C.A.B.:	Yes	14 C.F.R. 13.59 (1968).
Defense Security:	Yes, except if revealing informer's identity would harm national interest.	32 C.F.R. 155.7(a)(8), 155.7(d-5) (1968).
Immigration:	Yes	66 Stat. 209 (1952); 8 U.S.C. 1252(b)(3) (1964).

5. DOES THE GOVERNING REGULATION SPECIFY THAT THE PERSON ACTING AS REFEREE OR JUDGE AT THE HEARING MUST NOT HAVE HAD ANY PRIOR CONNECTION WITH THE CASE?

Agency	Answer	Citation
Welfare:	No	
Cal. A.P.A.:	Yes, ordinarily	Gov. C. 11512(c)
Cal. Civil Service:	Not specified	
School Boards:	Yes. Hearing is in state superior court.	Ed. C. 13412, 13418.
D.M.V.:	Yes	Veh. C. 14107.
U.S. A.P.A.:	Yes	80 Stat. 384 (1966); 5 U.S.C. 554(d)(Supp. II, 1967).
C.A.B.:	Probably	14 C.F.R. 13.39 (1968).
Defense Security:	Yes	32 C.F.R. 155.6(f) (1968).
Immigration:	Yes	66 Stat. 209 (1952); 8 U.S.C. 1252(b) (1964).

6. DOES THE DECISION TO REVOKE THE PRIVILEGE TAKE EFFECT ONLY AFTER THE INDIVIDUAL SUBJECT TO THE ADVERSE ACTION HAS HAD AN OPPORTUNITY TO BE HEARD? (Note that the value of the opportunity to be heard varies depending on the protections afforded at the hearing.)

Agency	Answer	Citation
Welfare:	Yes	
Cal. A.P.A.:	Yes	Gov. C. 11505.
Cal. Civil Service:	No Yes, where charges filed by an individual.	Gov. C. 19574, 19574.5, and 19583.5.
School Boards:	Yes, except for immoral conduct, conviction of felony, etc.; but permanent teacher is paid for 30 days.	Ed. C. 13404, 13408.
D.M.V.:	Yes, except where the physical or mental health of the licensee requires immediate action.	Veh. C. 13950, 13953.
U.S. A.P.A.:	Yes	80 Stat. 384 (1966); 5 U.S.C. 554(a)(Supp. II, 1967).
C.A.B.:	Yes, except in cases of air safety emergencies.	72 Stat. 779 (1958); 49 U.S.C. 1429 (1964).
Defense Security:	Yes, except where delay would pose an immediate threat to the national interest.	32 C.F.R. 155.7(a) and 155.8 (1968).
Immigration:	Yes	66 Stat. 208 (1952); 8 U.S.C. 1252(c) (1964).

7. IS THE ADVERSE ACTION STAYED BY AN APPEAL TO A HIGHER BRANCH OF THE AGENCY OR TO A JUDICIAL TRIBUNAL?

Agency	Answer	Citation
Welfare:	No, except for the trial court's judgment and mandate in McCullough v. Terzian.	
Cal. A.P.A.:	Yes	Gov. C. 11519, 11521.
Cal. Civil Service:	No	Gov. C. 19574.
School Boards:	Yes	Ed. C. 13404, 13436.
D.M.V.:	Not applicable; Director makes decision.	Veh. C. 14110, 14111.
U.S. A.P.A.:	Yes, on motion.	80 Stat. 393 (1966); 5 U.S.C. 705 (Supp. II, (1967).
C.A.B.:	Yes, except in cases of air safety emergencies.	72 Stat. 779 (1958); 49 U.S.C. 1429 (1964).
Defense Security:	Yes, upon examiner's determination.	32 C.F.R. (1968); 155.7 (e)(1).
Immigration:	Yes	8 C.F.R. 3.6 (1968).

Appendix C

Court of Appeal of the State of California
First Appellate District—Division Three

1 Civil No. 25830

Mary McCullough, et al.,
Plaintiffs and Respondents,
v.
Hrayr Terzian, et al.,
Defendants and Appellants.

OPPOSITION TO INTRODUCTION OF ADDITIONAL EVIDENCE

Respondent by letter dated June 10, 1969 to the Honorable Lawrence R. Elkington, Clerk of the Court of Appeal, First Appellate District enclosed "additional documentary evidence to be presented to the Court for addition to the record as a supplement to Respondents' Motion for Leave to Offer Additional Documentary Evidence, set for hearing June 18, 1969 at 10 o'clock a.m."

Appellant opposes this latest offer on the following grounds:

1. Such offer does not comply with Rule 41 of California Appellate Rules of Court which requires that not only the notice but the "accompanying papers shall be served and filed at least 15 days before the date designated for hearing of the motion."

2. The purported evidence consisting of a chart and explanatory correspondence, is irrelevant and immaterial —cost to the state has not been put in issue; in addition the material does not purport to be complete.

Submission of this material and the initial offer of the fair hearing decisions are solely for the purpose of obfuscating the real issue before the court, i.e., does the pretermination of aid procedures meet minimum due process requirements.

Dated: June 12, 1969

THOMAS C. LYNCH
Attorney General

ELIZABETH PALMER
Deputy Attorney General
Attorneys for Defendants and Appellants